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Harris Opara

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA – OAKLAND DIVISION

Harris Opara,

Plaintiff,

v.

Bank of America, National Association

Defendant.

CASE NO.

COMPLAINT FOR DAMAGES:

1. Violation of Truth In Lending Act

COMES NOW Plaintiff Harris Opara, an individual, based on information and belief, to allege as follows:

**INTRODUCTION**

1. Plaintiff brings an action to enforce their rights under The Truth In Lending Act an the Fair Debt Collection Practices Act.
2. This case arises under 15 U.S.C. §1601 et seq.
3. This action is being brought against Bank of America, National Association.

- 1 4. The United States Congress has found that economic stabilization would be enhanced  
2 and the competition among the various financial institutions and other firms engaged in  
3 the extension of consumer credit would be strengthened by the informed use of credit.  
4 The informed use of credit results from an awareness of the cost thereof by consumers.
- 5 5. The Truth In Lending act (TILA) was enacted to assure a meaningful disclosure of  
6 credit terms so that the consumer will be able to compare more readily the various  
7 credit terms available to him and avoid the uninformed use of credit, and to protect the  
8 consumer against inaccurate and unfair credit billing and credit card practices.
- 9 6. On July 7, 2017 the Consumer Financial Protection Bureau modified the federal  
10 mortgage disclosure requirements under the Real Estate Settlement Procedures Act and  
11 the Truth in Lending Act that are implemented in Regulation Z.
- 12 7. Under the modification consumers in active bankruptcies with certain exceptions were  
13 to begin receiving periodic mortgage statements.
- 14 8. This action is filed to enforce Plaintiffs' consumer rights under Regulation Z's  
15 requirements published in CFR §1026.41 "Periodic Statements for residential mortgage  
16 loans"
- 17 9. Under CFR §1026.41 creditors shall furnish consumers with a periodic statement that  
18 discloses certain critical information including amount due, explanation of amount due,  
19 past payment breakdown, transaction activity, partial payment information, contact  
20 information, account information, and delinquency information.
- 21 10. Consumers depend on these periodic mortgage statements to track their balances and  
22 ensure payments are applied properly i.e. peace of mind.
- 23 11. Without regular periodic statements a consumer can not readily ascertain whether  
24 mortgage payments are being received and or applied properly.
- 25 12. When a consumer continuously (despite repeated requests) does not receive periodic  
26 mortgage statements every piece of critical information congress has mandated be  
27 supplied to a consumer remains a mystery.
- 28 13. The continuous absence of critical information at a minimum causes severe stress,  
anxiety, and frustration in consumers.

### **JURISDICTION & VENUE**

1  
2 14. Plaintiff re-alleges and incorporates herein by this reference the allegations in each and  
3 every paragraph above, fully set forth herein.

4 15. This Court has jurisdiction under 28 U.S.C. §§ 1331, 1337, and 1367, and 15 U.S.C. §  
5 1681.

6 16. This venue is proper pursuant to 28 U.S.C. §1391(b).

7 **GENERAL ALLEGATIONS**

8 17. Plaintiffs re-alleges and incorporates herein by this reference the allegations in each  
9 and every paragraph above, fully set forth herein.

10 **Plaintiffs Bankruptcy Filing**

11 18. Plaintiff filed for Chapter 13 bankruptcy protection on June 30, 2014.

12 19. Plaintiff's Chapter 13 plan of reorganization was confirmed on August 27 2014.

13 20. Plaintiff received his discharge on May 18, 2018.

14 21. At the time of filing Plaintiff owned certain real property commonly referred to as 4980  
15 Ridgeview Dr., Antioch, CA 94531 ("Property").

16 22. The Property was encumbered with a first deed of trust held by Bank of America,  
17 National Association ("BANA")

18 23. The mortgage was not discharged in Plaintiff's Chapter 13 bankruptcy.

19 24. Plaintiff has not been able to verify what if any delinquency existed or exists because  
20 Plaintiff is not receiving any statements.

21 25. To date Plaintiff has failed to receive multiple mortgage statements.

22 26. Despite this Plaintiff has been diligently sending his monthly mortgage payments to  
23 BANA each month despite not receiving any confirmation that the payments were  
24 received.

25 27. To date Plaintiff has no way of verifying whether his monthly payments were applied  
26 correctly or if his loan has been flagged delinquent.

27 **FIRST CAUSE OF ACTION**

28 (Violation of CFR § 1026.41)  
Against Bank of America, N.A.)

**Bank of America, N.A. –Failure to provide periodic statements.**

1 28. Plaintiff realleges and incorporates herein the allegation in each and every paragraph  
2 above as though fully set forth herein.

3 29. CFR §1026.41(a)(2) provides: A servicer of a transaction subject to this section shall  
4 provide the consumer, for each billing cycle, a periodic statement meeting the  
5 requirements of paragraphs (b), (c), and (d) of this section. If a mortgage loan has  
6 a billing cycle shorter than a period of 31 days (for example, a bi-weekly billing cycle), a  
7 periodic statement covering an entire month may be used.

8 30. Under CFR 1026.41(a)(2) servicer includes the creditor, *assignee*, or servicer, as  
9 applicable.

10 31. As a creditor BANA is therefore a servicer of the loan as defined by CFR 1026.41(a)(2).

11 32. CFR §1026.41(b) provides: The periodic statement must be delivered or placed in the  
12 mail within a reasonably prompt time after the payment due date or the end of any  
13 courtesy period provided for the previous billing cycle

14 33. Under CFR§1026.41(d) the periodic statement **shall** contain certain content including:

- 15 a. Amount due
- 16 b. Explanation of amount due
- 17 c. Past payment breakdown
- 18 d. Transaction activity
- 19 e. Partial payment information
- 20 f. Contact information
- 21 g. Account information
- 22 h. Delinquency information

23 34. Failure to include one of the aforementioned sections constitutes a facial violation under  
24 15 U.S.C. §1641(e).

25 35. BANA has always held Plaintiff's mortgage.

26 36. Plaintiffs have never opted out of their right to receive statements.

27 37. The Loan is not a reverse mortgage as described in 12 C.F.R. § 1024.41(e)(1).

28 38. The Loan does not secure an interest in a timeshare plan as described in 12 C.F.R. §  
1024.41(e)(2).

1 39. BANA has not provided Plaintiff with a coupon book that meets the requirements of  
2 12C.F.R. § 1024.41(e)(3).

3 40. BANA is not a small servicer as that term is defined in 12 C.F.R. § 1024.41(e)(4).

4 41. Plaintiff has not been in a debtor in bankruptcy under Title 11 of the United States Code  
5 at any time since May of 2018.

6 42. BANA's actions are not covered by the "single-statement exemption" given that months  
7 have passed since Plaintiff has concluded bankruptcy and BANA has failed to send any  
8 periodic statement.

9 43. As a direct result of BANA's failure to provide periodic statements Plaintiff has suffered  
10 severe emotional distress, anxiety, sleeplessness, frustration, and fees attempting to have  
11 BANA comply with the law.

12 **PRAYER FOR RELIEF**

13 44. WHEREFORE, Plaintiffs pray for judgment as follows:

14 45. For preliminary and permanent injunctive relief to stop Defendant BANA from engaging  
15 in the conduct described above

16 46. An award of actual damages, statutory damages, costs, and attorney's fees against BANA  
17 under 15 U.S.C. §1641(d)(2)(A) not to exceed:

- 18 a. An award of actual damages in the amount of \$25,000 under 15 U.S.C.  
19 §1640(a)(1)  
20 b. An award of statutory damages in the amount of \$4,000 under 15 U.S.C.  
21 §1640(a)(2)(A)(i)(iv)  
22 c. And reasonable attorney's fees and costs under 15 U.S.C. §1640(a)(3).

23  
24  
25 Dated: August 8, 2018

**SAGARIA LAW, P.C.**  
By: /s/ Elliot Gale  
Scott Sagaria, Esq.  
Elliot Gale, Esq.  
Attorneys for Plaintiffs

**DEMAND FOR JURY TRIAL**

Plaintiffs hereby demands trial of this matter by jury.

Dated: August 8, 2018

**SAGARIA LAW, P.C.**

/s/ Elliot Gale

Scott Sagaria, Esq.

Elliot Gale, Esq.

Attorneys for Plaintiffs